

## **REMARKS**

Applicant appreciates the Examiner's thorough consideration provided the present application and the courtesies of the personal interview conducted on November 21, 2002 with Examiner Wendy Boss and Supervisory Patent Examiner Deborah Jones. During this interview the 35 U.S.C. § 112 second paragraph and 35 U.S.C. § 102(b), 103 and double patenting rejections were discussed. These matters will be discussed below. Also an Information Disclosure Statement is being filed herewith. Notification of receipt of this Information Disclosure Statement and consideration of the document cited therein are requested.

Claims 1-28 are currently pending in the instant application. Claims 13 and 22 have been amended. Claims 1 and 13 are independent. Claims 27 and 28 have been added for the Examiners consideration. Reconsideration of the present application is earnestly solicited.

### **Claim Rejections Under 35 U.S.C. 112**

Claim 22 stands rejected under 35 U.S.C. § 112, second paragraph for failing to teach or suggest each and every element of the claimed invention. In light of the foregoing amendment to claim 22, Applicant respectfully submits that this rejection has been obviated and/or rendered moot.

**Claim Rejections Under 35 U.S.C. § 102**

Claims 13, 22 and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Tomarin (U.S. Patent No. 4,396,653). This rejection is respectfully traversed.

In light of the foregoing amendments to the claims, Applicant respectfully submits that this rejection has been obviated and/or rendered moot. Applicants submits that the prior art of record fails to teach or suggest each and every element of the unique combination of elements of the claimed invention, including the feature(s) of “the relationship of the length of the ribbons and the spacing between the rows is  $2A \leq L$  such that the length of the ribbons is at least twice the spacing,” and “the particulate material having a thickness T of substantially  $2/3$  the length of the ribbons, when A is the spacing between the rows, L is the length of the ribbon measured from the flexible backing and T is the thickness of the layer of particulate material.” The Examiner is reminded that the prior art of record fails to teach or suggest this combination of elements, including the interrelationship of the above-identified three parameters of spacing between the rows, ribbon length and the thickness of the particulate material. Accordingly, this rejection should be withdrawn.

**Claim Rejections Under 35 U.S.C. § 103**

Claim 26 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Tomarin in view of Rutherford, Sr. (U.S. Patent No. 5,794,861). Claims 1-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Haas, Jr. (U.S. Patent No. 4,337,283) in view of Rutherford, Sr. (U.S. Patent No. 5,794,861). These rejections are respectfully traversed.

With respect to claim 26, Applicant respectfully submits that the prior art of record fails to teach or suggest each and every element of the unique combination of elements of the claimed invention. For example, as discussed with respect to independent claim 13 hereinabove, the prior art of record fails to teach or suggest the limitation(s) of and “the particulate material having a thickness T of substantially  $2/3$  the length of the ribbons, when A is the spacing between the rows, L is the length of the ribbon measured from the flexible backing and T is the thickness of the layer of particulate material.” In addition, Rutherford does not appear to teach or suggest the additional features of dependent claim 26. The rejections based upon Tomarin in view of Rutherford should be withdrawn.

With respect to the alleged combination of Haas in view of Rutherford, Applicant respectfully submits that the alleged combination fails to teach or suggest each and every element of the unique combination of elements of the

claimed invention of claims 1 and 13. Accordingly, these rejections should be withdrawn.

With respect to claim 1, Applicant respectfully submits that the specific interrelationship between the parameters of the "spacing" of the rows of ribbons and the length of the ribbons is not taught or suggested by the prior art of record. As discussed during the personal interview, this interrelationship permits a first ribbon to "fold" over and slightly contact an adjacent ribbons, thereby advantageously containing the particulate lying therebetween.

For example, the prior art of record fails to teach or suggest the feature(s) of "the rows of ribbons spaced apart from each other from between 5/8 inch and 2-1/4 inches, and the length of the ribbons, extending upwardly from the backing member, is at least twice the dimension of the spacing between the rows of ribbons, the surface including a relatively thick layer of particulate material on the backing member supporting the ribbons in a relatively upright position relative to the backing member." Accordingly, this rejection should be withdrawn.

With respect to claim 13, as discussed hereinabove, the prior art of record fails to teach or suggest the feature(s) of "the relationship of the length of the ribbons and the spacing between the rows is  $2A \leq L$  such that the length of the ribbons is at least twice the spacing" and "the particulate material having a thickness T of substantially 2/3 the length of the ribbons, when A is

the spacing between the rows, L is the length of the ribbon measured from the flexible backing and T is the thickness of the layer of particulate material.” Accordingly, this rejection should be withdrawn and the present application should be passed to Issue.

In accordance with the above discussion of the patents relied upon by the Examiner, Applicants respectfully submit that these documents, either in combination together or standing alone, fail to teach or suggest the invention as is set forth by the claims of the instant application.

Accordingly, reconsideration and withdrawal of the claim rejection are respectfully requested. Moreover, the Applicants respectfully submit that the instant application is in a condition for allowance.

As to the dependent claims, Applicants respectfully submit that these claims are allowable due to their dependence upon an allowable independent claim, as well as for additional limitations provided by these claims.

### **Double Patenting**

Claim 1 stands rejected under 35 U.S.C. § 101 as claiming substantially the same invention as that of claim 21 of prior U.S. Patent No. 6,338,885. As discussed with the Examiner during the personal interview, Applicant respectfully submits that this rejection under 35 U.S.C. § 101 appears

improper since claim 1 of the present application does not claim substantially the same invention as that of claim 21 of the U.S. Patent No. 6,338,885.

Without conceding the propriety of the Examiner's rejections, but merely to timely advance the prosecution of the present application, Applicant has submitted a terminal disclaimer concurrently herewith that addresses potential, non-statutory "double patenting" rejections considered by the Examiner. Accordingly, Applicant respectfully submits that this rejection should be withdrawn.

#### **CONCLUSION**

Since the remaining patents cited by the Examiner have not been utilized to reject the claims, but rather to merely show the state-of-the-art, no further comments are necessary with respect thereto.

All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently pending rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

Attached hereto is a marked-up version of the changes made to the application by this Amendment.

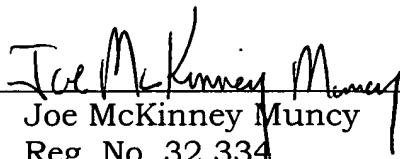
In the event there are any matters remaining in this application, the Examiner is invited to contact Matthew Shanley, Registration No. 47,074 at (703) 205-8000 in the Washington, D.C. area.

Applicant respectfully petitions under the provisions of 37 C.F.R. § 1.136(a) and § 1.17 for a one-month extension of time in which to respond to the Examiner's Office Action. The Extension of Time Fee in the amount of **\$55.00** is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By   
Joe McKinney Muncy  
Reg. No. 32,334

KM/MTS/cl

P. O. Box 747  
Falls Church, VA 22040-0747  
(703)205-8000

Attachment: Version with Markings to Show Changes Made

**MARKED-UP VERSION OF AMENDMENTS**

**IN THE CLAIMS:**

**Claims 26 and 27 have been added.**

**The claims have been amended as follows:**

13. (Amended) A synthetic grass surface, [for a sports playing field] wherein the synthetic grass surface comprises a flexible backing member, parallel rows of synthetic ribbons, representing blades of grass, projecting upwardly from the backing member, the rows of ribbons spaced apart from each other, the surface including a relatively thick layer of particulate material on the backing member supporting the ribbons in a relatively upright position relative to the backing member, whereby the relationship of the length of the ribbons and the spacing between the rows is

$$2A \leq L$$

such that the length of the ribbons is at least twice the spacing; and the particulate material having a thickness T of [at least] substantially 2/3 the length of the ribbons, when A is the spacing between the rows, L is the length of the ribbon measured from the flexible backing and T is the thickness of the layer of particulate material.



22. (Amended) The surface as defined in claim 13, wherein the relationship of the length of the ribbons, the spacing between the rows and the thickness of the particulate material is:

$$2A = 3/2T [\leq] \equiv L.$$